REMARKS

The present application was filed on November 21, 2000 with claims 1-41. Claims 1-41 are currently pending in the application. Claims 1, 13, 28 and 37 are the independent claims.

In the Office Action, claim 6 is rejected under 35 U.S.C. §112, second paragraph. In addition, claims 28, 32, 37 and 38 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,774,660 to Brendel et al. (hereinafter "Brendel"). Claims 1-5, 7, 11-17, 19 and 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Brendel in view of U.S. Patent No. 6,098,093 to Bayeh et al. (hereinafter "Bayeh") in further view of allegedly admitted prior art. Claims 18, 20-22 and 24 are rejected under 35 U.S.C. §103(a) as being unpatentable over Brendel in view of Bayeh in further view of Cisco Systems, *Catalyst 6000 Family Accelerated Server Load Balancing*, http://www.cisco.com/warp/public/cc/pd/si/casi/ca6000/tech/aslb_wp.htm. Claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over Brendel in view of P. Srisuresh et al., *RFC2391: Load Sharing using IP Network Address Translation (LSNAT)*, August 1998. Finally, claims 29-31, 33-36 and 39-41 are rejected under 35 U.S.C. §103(a) as being unpatentable over Brendel.

The Examiner states that claims 8-10 and 25-27 would be allowable if rewritten in independent form. The Examiner also objects to various informalities in claims 3 and 9 (Final Office Action, p. 2). Applicant has amended claims 3 and 9 to conform to the Examiner's recommendations.

With respect to the 35 U.S.C. §112, second paragraph, rejection of claim 6, the Examiner recommends that the claim be amended to specify that the load balancer is operating in the first mode (Final Office Action, p. 5). Applicant agrees. Claim 6 has been amended to conform to the Examiner's recommendation.

With respect to the §102(b) and §103(a) rejections, the Examiner argues in the Final Office Action on p. 3 that:

> In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a load balancer and a discrete load balancing accelerator) are not recited in the rejected claims. The claims do not specify that the load balancer and the balancer are discrete devices.

Applicant respectfully disagrees. Nevertheless, to clarify these claims and place them in better form for consideration on appeal, Applicant chooses to amend each of the independent claims to explicitly state that the load balancer element and the accelerator element are separate from one another.

These amendments have support in the application as originally filed. The fact that the load balancer element and the accelerator element are separate from one another is clear from the construction of the claims, the specification and the figures. With respect to the claims, for example, claims 28 and 37 both describe "[a] load balancing accelerator, comprising: an input interface which receives packets directed to a load balancer." It would clearly be illogical to introduce "a load balancer" element in this manner if the load balancer were not a discrete element from the load balancing accelerator. Similarly, the specification also defines an accelerator as a separate element from a load balancer. According to the specification, a load balancer may receive packets directed to a web site and distributes the packets between the plurality of servers. See the specification, p. 1, lines 5-10. An accelerator, on the other hand, learns how to distribute packets based on the behavior of the load balancer and forwards subsequent packets from a client to the load balancer directly to the servers. See the specification, p. 1, line 16 to p. 2, line 3. An accelerator may function in part, thereby, to advantageously reduce the load on the associated load balancer. Finally, FIGS. 1 and 8 show a load balancer and accelerator elements as separate from one another.

Applicant notes that the Manual of Patent Examining Procedure (MPEP), Eighth Edition, August 2001, §2131, specifies that a given claim is anticipated "only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, MPEP §2131 indicates that the cited reference must show the "identical invention . . . in as complete detail as is contained in the . . . claim," citing Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In formulating the §102(b) rejection of claims 28 and 37, the Examiner argues that each and every element of the claims is anticipated by Brendel. However, while Brendel describes a form of load balancer, it fails to describe a discrete element corresponding to an accelerator as set forth in the claims. In fact, Brendel does not even contain the word "accelerate" or "accelerator." Because of this omission, the Examiner apparently argues that the load balancer in Brendel functions as both a load balancer and a corresponding accelerator. With this explanation, the Examiner substitutes Brendel's

load balancer for the discrete accelerator element when arguing that Brendel anticipates the claims in the present invention. Applicant respectfully suggests that such a argument is untenable because Brendel fails to describe each and every element of the claims.

Moreover, a load balancer, even one with more than one state of operation, does not function like a separate accelerator acting in combination with a load balancer. One skilled in the art will recognize that the load balancer of Brendel, for instance, is not capable of doing load balancing operations and acceleration operations simultaneously. Brendel's load balancer must enter a "pass through" state in order to send subsequent packets from the browser to the assigned server. See Brendel, col. 12, lines 59-63. A discrete accelerator, on the other hand, is capable of sending packets directly to a server while the load balancer continues to load balance. See the specification, p. 1, line 16 to p. 2, line 3. Consequently, a discrete accelerator, as described in claim 28 and 37, may advantageously reduce the load on the load balancer and, thereby, decrease the need to replace or add load balancers. See the specification, p. 1, lines 11-15. Brendel's invention is devoid of such an advantage.

With respect to this last argument, the Examiner further argues:

> Brendel discloses that the "pass-through state" simply means that subsequent packets from the same client are passed through to the assigned server. Packets which have not been assigned to server are still load balanced, so the load balancer does perform both load balancing and acceleration simultaneously (Final Office Action, p. 3-4)

Applicant respectfully disagrees and suggests that the Examiner is assuming that Brendel's accelerator can operate in more than one "state" simultaneously. Nevertheless, such an assumption is not supported by Brendel.

Dependent claims 32 and 38 are believed allowable for at least the reasons identified above with regard to their respective independent claims, as amended, and these claims are also believed to specify additional separately-patentable subject matter relative to Brendel and other prior art of record.

With respect to the §103(a) rejection, Applicant initially notes that MPEP §2143.03 states that in order "[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must

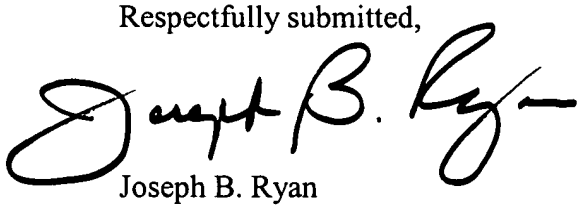
be taught or suggested by the prior art," citing In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Applicant also notes that MPEP §2143.03 provides that "[i]f an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious," citing In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

With regard to the§103(a) rejection of claims 1-7, 11-24, 29-31, 33-36 and 39-41 as unpatentable over Brendel as a sole reference or in combination with other references, Applicant notes that the Examiner again relies on Brendel to teach or suggest both the load balancer element and discrete accelerator element present in each of the rejected claims. Applicant again submits, as described above with respect to the §102(b) rejection, that Brendel fails to teach or suggest such a system or method, and that the added references fail to correct this fundamental deficiency. Applicant, therefore, respectfully submits that claims 1-7, 11-24, 29-31, 33-36 and 39-41 would not have been obvious at the time the invention was made and that the claims should be allowed.

Applicant requests that the amendments to claims 3, 6 and 9 be entered under 37 CFR §1.116(b)(1) because they comply with requirements of form expressly set forth in the Final Office Action. Moreover, Applicant requests that the amendments to independent claims 1, 13, 28 and 37 be entered under 37 CFR §1.116(b)(2) because they place the claims in better form for consideration on appeal. Applicant believes that these amendments put all the pending claims in condition for allowance over the §112, second paragraph, §102(b) and §103(a) rejections.

A Notice of Appeal is submitted concurrently with these remarks.

Respectfully submitted,



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Joseph B. Ryan
Attorney for Applicant(s)
Reg. No. 37,922
Ryan, Mason & Lewis, LLP
90 Forest Avenue
Locust Valley, NY 11560
(516) 759-7517

Enclosure(s): Notice of Appeal